

U.S. GOVERNMENT  
SUSPENDED  
UNITED STATES  
FOREIGN INTELLIGENCE SURVEILLANCE COURT  
WASHINGTON, D.C.

2014 MAR 12 PM 4:30

RECEIVED  
CLERK OF COURT  
LYNN HALL

---

IN RE APPLICATION OF THE FEDERAL  
BUREAU OF INVESTIGATION FOR AN  
ORDER REQUIRING THE PRODUCTION  
OF TANGIBLE THINGS

Docket No. BR 14-01

**NOTICE OF PENDENCY OF OTHER ACTION OR PROCEEDING**

Movants submit this Notice of Pendency of Other Action or Proceeding to give this Court notice of a recent development in *Carolyn Jewel, et al., v. National Security Agency, et al.*, No. 08-cv-4373-JSW (N.D. Cal.) and *First Unitarian Church of Los Angeles, et al. v. National Security Agency, et al.*, Case No. 13-cv-3287-JSW (N.D. Cal.).

Movants respectfully request that the Court take notice of the Northern District of California's March 10, 2014 Order Granting Temporary Restraining Order, attached hereto as **Exhibit A**. Movants made an *ex parte* motion before that Court seeking an order temporarily restraining the government from destroying potential evidence, including the telephone metadata ("call detail") records, in violation of the existing evidence preservation order in *Jewel v. NSA*, No. 08-cv-4373-JSW (N.D. Cal.) and the government's evidence preservation obligations in *First Unitarian Church of Los Angeles v. NSA*, No. 13-cv-3287-JSW (N.D. Cal.). The subject of evidence retention was addressed in this Court's order of March 7, 2014. The District Court granted the motion and issued a temporary restraining order. The Court further ordered full briefing by all parties with a hearing to decide the matter on March 19, 2014.

DATE: March 11, 2014

Respectfully submitted,



**KURT OPSAHL**

KURT OPSAHL  
ELECTRONIC FRONTIER FOUNDATION  
815 Eddy Street  
San Francisco, CA 94109  
Telephone: (415) 436-9333  
kurt@eff.org

*Counsel for Movants*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copies of the foregoing motion have been served on the following counsel on this 11<sup>th</sup> day of March, 2014, in the manner indicated:

By Overnight Delivery:

CHRISTINE GUNNING  
United States Department of Justice  
Litigation Security Group  
2 Constitution Square  
145 N Street NE  
Suite 2W-115  
Washington, DC 20530  
(202) 514-9016

HON. JEFFREY S. WHITE  
United States District Judge  
Northern District of California  
450 Golden Gate Avenue  
Courtroom 11, 19<sup>th</sup> Floor  
San Francisco, CA 94102  
(415) 522-4173

By Email:

JAMES J. GILLIGAN  
Special Litigation Counsel  
james.gilligan@usdoj.gov  
U.S. Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue, NW, Rm. 6102  
Washington, D.C. 20001  
Phone: (202) 514-3358

MARCIA BERMAN  
Senior Trial Counsel  
marcia.berman@usdoj.gov  
U.S. Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue, NW, Rm. 7132  
Washington, D.C. 20001  
Phone: (202) 514-2205

Counsel for Defendants in *Jewel v. NSA*, No. 08-cv-4373-JSW (N.D. Cal.) and *First Unitarian Church, v. NSA*, No. 13-cv-3287-JSW (N.D. Cal.)

Dated: March 11, 2014

  
KURT OPSAHL

# Exhibit A

# Exhibit A

1  
2  
3  
4  
5

6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE NORTHERN DISTRICT OF CALIFORNIA

8 CAROLYN JEWEL, ET AL.,

9 Plaintiffs,

10 v.

No. C 08-04373 JSW  
No. C 13-03287 JSW

11 NATIONAL SECURITY AGENCY, ET AL.,

12 Defendants.

---

13 ORDER GRANTING  
14 TEMPORARY RESTRAINING  
15 ORDER

16 FIRST UNITARIAN CHURCH OF LOS  
17 ANGELES, ET AL.,

18 Plaintiffs,

19 v.

20 NATIONAL SECURITY AGENCY, ET AL.,

21 Defendants.

---

22 This matter is now before the Court on Plaintiffs' *ex parte* motion for a temporary  
23 restraining order requesting immediate relief. The Court HEREBY ORDERS that its prior  
24 evidence preservation orders in these related matters shall be enforced. It is undisputed that the  
25 Court would be unable to afford effective relief once the records are destroyed, and therefore  
26 the harm to Plaintiffs would be irreparable. A temporary restraining order is necessary and  
27 appropriate in order to allow the Court to decide whether the evidence should be preserved with  
28 the benefit of full briefing and participation by all parties.

1           Accordingly, it is HEREBY ORDERED that Defendants, their officers, agents, servants,  
2 employees, and attorneys, and all those in active concert or participation with them are  
3 prohibited, enjoined, and restrained from destroying any potential evidence relevant to the  
4 claims at issue in this action, including but not limited to prohibiting the destruction of any  
5 telephone metadata or "call detail" records, pending further order of the Court. The Court  
6 determines that there is no security necessary under the circumstances.

7           The Court sets the following briefing and hearing schedule, all in PST, in this matter:

8           Plaintiffs' opening brief shall be filed no later than March 13, 2014 at 2:00 p.m.

9           Defendants' opposition brief shall be filed no later than March 17, 2014 at 11:00 a.m.

10           Plaintiffs' reply brief shall be filed no later than March 18, 2014 at 2:00 p.m.

11           The hearing on this issue shall be set for March 19, 2014 at 2:00 p.m.

12  
13           **IT IS SO ORDERED.**

14           Dated: March 10, 2014

  
\_\_\_\_\_  
JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE